



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**JUL 30 2014**

Guillermo Cabrera, Esq.  
600 West Broadway, Suite 700  
San Diego, CA 92101

RE: MUR 6750  
Carl DeMaio for Congress and Paul Kilgore  
in his official capacity as treasurer  
Carl DeMaio  
Reform San Diego with Carl DeMaio  
f.k.a. Reform San Diego

Dear Mr. Cabrera:

On July 22, 2014, the Federal Election Commission reviewed the allegations in your complaint dated August 15, 2013, and found that on the basis of the information provided in your complaint, and information provided by respondents, there is no reason to believe that Carl DeMaio for Congress and Paul Kilgore in his official capacity as treasurer violated 2 U.S.C. §§ 441i(e) or 434(b), no reason to believe that Reform San Diego with Carl DeMaio f.k.a. Reform San Diego violated 2 U.S.C. § 441i(e), and no reason to believe that Carl DeMaio violated 2 U.S.C. § 441i(e). Accordingly, on July 22, 2014, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings is enclosed.

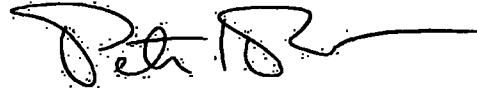
The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

MUR 6750  
Guillermo Cabrera, Esq.  
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Daniel A. Petalas  
Associate General Counsel for Enforcement

A handwritten signature in black ink, appearing to read "Peter Blumberg", with a long horizontal line extending to the right.

BY: Peter G. Blumberg  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

140344MUN-101010

1 **FEDERAL ELECTION COMMISSION**

2  
3 **RESPONDENTS:** Carl DeMaio for Congress and Paul Kilgore  
4 in his official capacity as treasurer  
5 Reform San Diego with Carl DeMaio f.k.a.  
6 Reform San Diego  
7 Carl DeMaio  
8

MUR 6750

9 **FACTUAL AND LEGAL ANALYSIS**

10  
11 **I. INTRODUCTION**

12 This matter was generated by a Complaint filed with Federal Election Commission by  
13 Guillermo Cabrera, alleging violations of the Federal Election Campaign Act of 1971, as  
14 amended ("the Act"), by Respondents.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Background**

17 The Complaint in this matter alleges that Reform San Diego with Carl DeMaio ("RSD"),  
18 a city-registered committee founded by congressional candidate Carl DeMaio to support local  
19 ballot measures, violated the Act by soliciting, receiving or directing funds outside the federal  
20 source restrictions and using those funds to make excessive in-kind contributions for DeMaio's  
21 exploration of a federal candidacy.

22 The RSD Response, adopted by Carl DeMaio and Carl DeMaio for Congress, asserts that  
23 RSD's expenditures were all for the purpose of promoting RSD's ballot measure activity and  
24 were not for the purpose of promoting DeMaio's congressional campaign.<sup>1</sup>

<sup>1</sup> RSD Resp. at 4 (Sept. 10, 2013). RSD's response was filed by its treasurer, C. April Bolling, under penalty of perjury. *Id.* at 5. See also Carl DeMaio Resp. at 1 (Oct. 17, 2013) (adopting RSD response) and Carl DeMaio for Congress Resp. at 1 (Oct. 29, 2013) (adopting RSD response).

1 Based on the available information, the Commission finds no reason to believe that  
2 Respondents violated 2 U.S.C. §§ 441i(e) or 434(b) in connection with the RSD disbursements  
3 cited in the Complaint, and closes the file in this matter.

4 **B. Facts**

5 Carl DeMaio is a candidate for Congress in the 2014 election for the 52nd Congressional  
6 District of California. DeMaio announced his candidacy on May 30, 2013, and established Carl  
7 DeMaio for Congress ("the Committee") as his principal campaign committee the same day.<sup>2</sup>  
8 The Committee timely filed its first disclosure report, the 2013 July Quarterly report; the report  
9 disclosed no activity prior to May 30, 2013.

10 RSD is a ballot measure committee registered with the City of San Diego. RSD was  
11 formed in 2004, and DeMaio has been its controlling officer since that time.<sup>3</sup> According to RSD,  
12 it has been active on ballot measures on the City of San Diego ballot during every election cycle  
13 since 2004.<sup>4</sup>

14 In the first half of 2013, RSD disclosed \$27,872.35 in disbursements, the largest of which  
15 were \$7,500 for polling and survey research and \$9,000 to a campaign consultant.<sup>5</sup> During the  
16 same time period, it received \$32,954 in monetary donations and \$1,876.19 in non-monetary

<sup>2</sup> See RSD Resp. at 2. DeMaio asserts that he decided to run for Congress on May 27, 2013, and reached the threshold for becoming a candidate on May 31, 2013. *Id.* DeMaio filed his Statement of Candidacy with the Commission on June 4, 2013.

<sup>3</sup> See RSD Resp. at 1; RSD disclosure reports filed with the City of San Diego Office of the City Clerk (portal at <https://ssl.netfile.com/pub2/Default.aspx?aid=CSD>). DeMaio was a member of the San Diego City Council from 2008-2012 and ran unsuccessfully for San Diego Mayor in 2012. See <http://www.sandiego.gov/city-clerk/pdf/mayorresults.pdf>.

<sup>4</sup> See RSD Resp. at 1-2.

<sup>5</sup> RSD attached to its response its disclosure reports covering January 1, 2010, through June 30, 2013. See RSD 2013 Mid Year Report at 3, 28-33. The disclosure report form does not contain a field for the date of payments made. RSD also disclosed a \$13,892.94 disbursement to DeMaio in repayment of a loan, leaving RSD in debt to DeMaio in the amount of \$18,107.06 on June 30, 2013. See *id.* at 25.

1 donations.<sup>6</sup> These donations consisted of donations from individuals ranging from \$25.00 to  
2 \$2,500.00, and from entities including corporations ranging from \$100.00 to \$1,500.00.<sup>7</sup> RSD  
3 received most of these donations during the first quarter of 2013; it received only one donation  
4 after April 4, 2013 — \$100 from a corporation on May 5, 2013.<sup>8</sup> According to a press article  
5 cited in the Complaint, DeMaio stated that as of April 15, 2013, RSD had no staff.<sup>9</sup>

6 The Complaint alleges that RSD impermissibly solicited, received, or directed funds  
7 outside the federal source restrictions and used those funds to make excessive in-kind  
8 contributions in connection with DeMaio's exploration of a federal candidacy. According to the  
9 Complaint, those in-kind contributions were made in the first half of 2013, and include payments  
10 for campaign consulting services, polling, office expenses, internet and email services, and a trip  
11 to Washington, D.C.<sup>10</sup> The Complaint asserts that a comparison between the amount of money  
12 that RSD spent in 2012 (when RSD was active in two ballot measure campaigns) and the larger  
13 amount spent in 2013 (when there were no ballot questions before the voters) demonstrates that  
14 its 2013 spending was in connection with DeMaio's exploration of a federal candidacy.<sup>11</sup>

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<sup>6</sup> See *id.* at 3-24, 26.

<sup>7</sup> See *id.* (disclosing the receipt of donations from sixteen entities totalling \$8,550).

<sup>8</sup> See *id.* at 21. The only subsequent receipt disclosed by RSD during this period was a \$500 loan from DeMaio on June 1, 2013. See *id.* at 25.

<sup>9</sup> The article further states that prior to DeMaio's declaration as a federal candidate, the names of RSD staff, including DeMaio, were removed from the RSD website, and that RSD and Carl DeMaio for Congress shared a phone number; DeMaio reportedly stated that he personally paid for the phone line. See Compl. at 2 n.1, citing Claire Tragesar and Brooks Williams, *Carl DeMaio: 'The Future Something.'* KPBS NEWS, June 19, 2013, <http://www.kpbs.org/news/2013/jun/19/carl-demaio-congress-reform-san-diego-campaign-fin/>.

<sup>10</sup> Compl. at 3-6 (Aug. 20, 2013).

<sup>11</sup> *Id.* at 2-3, 5.

1 RSD responds that the Complainant “provides absolutely no ‘evidence’ in his complaint,  
2 just conjecture” that RSD accepted corporate contributions and used these funds to make in-kind  
3 contributions in connection with DeMaio’s exploration of federal candidacy.<sup>12</sup> According to  
4 RSD, it only made disbursements relating to its ballot measures and made no expenditures in  
5 support of DeMaio’s congressional candidacy.<sup>13</sup>

6 RSD asserts that the Complaint wrongly compares RSD’s 2013 activity to its 2012  
7 activity, explaining that RSD’s spending in 2013 is “very similar” to its spending “during the  
8 proper period of comparison in 2011,” which RSD refers to as the “formulation phase” of  
9 researching, polling, and crafting ballot measures for the upcoming election cycle.<sup>14</sup> RSD asserts  
10 that its 2012 activity was the “advocacy phase” of the ballot initiative process. Further, in 2012,  
11 according to RSD, separate committees handled that phase for each Proposition that appeared on  
12 the ballot.<sup>15</sup>

13 RSD says it conducted polling in March 2013 on several ballot measure questions it was  
14 considering for the 2014 local elections, and cites press coverage of the results of the polling  
15 regarding city employee pensions during March 25 - 28, 2013.<sup>16</sup> In addition, RSD asserts that  
16 the campaign consulting expenses cited in the Complaint were payments to a consultant for her  
17 activities relating to RSD’s research and fundraising,<sup>17</sup> and expenses for other vendors relate to

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<sup>12</sup> RSD Resp. at 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> RSD Resp. at 3.

1 email and credit card fees charged on donations raised by RSD during the reporting period.<sup>18</sup>

2 According to RSD, these expenses are common and made in the normal course of supporting  
3 ballot initiatives.<sup>19</sup>

4 RSD explains that its payment for DeMaio's airline ticket to Washington, D.C., was in  
5 connection with his speech to the American Enterprise Institute ("AEI") on January 15, 2013, on  
6 a pension-reform ballot initiative that RSD developed and helped to qualify and pass during the  
7 2012 election.<sup>20</sup> During that trip, DeMaio also met with potential supporters and partners for  
8 RSD's continued activities with reform ballot measures.<sup>21</sup>

9 RSD also asserts that its fundraising activity during the first quarter of 2013 took place  
10 "far in advance of Mr. DeMaio becoming a federal candidate."<sup>22</sup> Further, RSD asserts that it  
11 spent all the money it had before DeMaio became a federal candidate, and its fund balance was  
12 brought to \$0 as of May 24, 2013.<sup>23</sup> According to RSD, pursuant to FEC guidance, "since  
13 DeMaio is a federal candidate, RSD only accepts federally-permissible funds and [RSD] has  
14 held absolutely no federally-impermissible funds since DeMaio became a federal  
15 candidate."<sup>24</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* (emphasis in original).

C. Analysis

A “contribution” under the Act and Commission regulations is anything of value made by any person for the purpose of influencing any election for federal office, which includes all in-kind contributions.<sup>25</sup> Funds received and payments made solely for the purpose of determining whether an individual should become a candidate are excepted from the definitions of “contribution” and “expenditure.”<sup>26</sup> Nevertheless, all funds raised and spent for “testing the waters” activities<sup>27</sup> are subject to the Act’s \$2,600 per election contribution limit and the prohibition against knowingly accepting or receiving contributions from corporations.<sup>28</sup> Further, when an individual becomes a candidate,<sup>29</sup> all funds received or payments made in connection with “testing the waters” activities prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in the first report filed by the candidate’s principal campaign committee.<sup>30</sup>

The Act prohibits federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled (“EFMC’d”) by federal candidates from soliciting, receiving, directing, transferring, or spending funds in connection with an election for

<sup>25</sup> 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(d)(1).

<sup>26</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>27</sup> Such “testing the waters” activities include, but are not limited to, payments for polling, telephone calls, and travel. *Id.*

<sup>28</sup> *Id.*; 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), 441b(a).

<sup>29</sup> See 2 U.S.C. § 431(2).

<sup>30</sup> See 2 U.S.C. § 434(b); 11 C.F.R. §§ 100.72(a), 100.131(a), 101.3, 104.3(a), 104.3(b).



1 federal office, including funds for any federal election activity, unless the funds are subject to the  
2 limitations, prohibitions, and reporting requirements of the Act.<sup>31</sup>

3 The Complaint alleges that RSD's disbursements in the first half of 2013 were not for the  
4 purpose of supporting ballot initiatives, but rather for the purpose of exploring a possible federal  
5 candidacy by DeMaio, and thus violated section 441i(e), *inter alia*. If the allegation is true, the  
6 Committee was required to report those in-kind contributions in its first filed disclosure report  
7 after DeMaio became a federal candidate. Further, to be in compliance with the Act the in-kind  
8 contributions had to comply with the limits and prohibitions of the Act. It is apparent that the  
9 Committee reported no in-kind contributions from RSD on its first filed report, that the  
10 disbursements alleged to be in-kind contributions to DeMaio were paid for with funds derived in  
11 part from corporate donations, and that the disbursements were in an aggregate amount in excess  
12 of the Act's contributions limits. Thus, if there is reason to believe that the Complaint's  
13 allegations are true, there is reason to believe RSD and DeMaio violated 2 U.S.C. § 441i(e) and  
14 the Committee violated 2 U.S.C. § 441i(e) and 434(b). The available information, however, does  
15 not support the Complaint's allegation that RSD supported DeMaio by paying for expenses  
16 related to testing the waters for a potential candidacy.

17 The core of the Complaint's allegations rests on an inference that RSD's disbursements  
18 in the first half of 2013 must have been made to explore DeMaio's potential federal candidacy,  
19 because the "expenses cannot be explained as payments made in the normal course of supporting  
20 ballot question initiatives."<sup>32</sup> The Complaint asserts that RSD's fundraising and spending in the  
21 first half of 2013 (when there were no ballot questions before the voters) was abnormally high,

<sup>31</sup> 2 U.S.C. § 441i(e)(1)(A).

<sup>32</sup> Compl. at 5.

1 even when compared with its spending in 2012, when it was engaged in two ballot measure  
2 campaigns.<sup>33</sup> The Complaint highlights RSD's payments in the first half of 2013 for campaign  
3 consulting (\$9,000), polling (\$7,500), digital media (\$600), office expenses, paid to Aristotle  
4 International, Inc. ("Aristotle") (over \$1,000), and for a trip DeMaio made to Washington, D.C.  
5 in January (\$323.20).<sup>34</sup> The Complaint also notes that RSD held two fundraisers during this  
6 time, and received \$53,537 in donations, which surpassed the amount it raised in the entirety of  
7 2012.<sup>35</sup>

8 The Response disputes the Complaint's allegations and provides persuasive information  
9 to support its own assertion that RSD's payments during the first half of 2013 were made in  
10 connection with its own ballot initiative activities, and not for the purpose of exploring a federal  
11 candidacy by DeMaio. In addition to RSD's general explanation that 2013 was the "formulation  
12 phase" of ballot measures and should be compared to the 2011 formulation phase, not the 2012  
13 "advocacy phase," RSD demonstrates that the specific disbursements alleged to be in connection  
14 with DeMaio's potential federal candidacy were actually related to two ballot measures being  
15 considered for 2014 — one regarding a proposed tax increase for infrastructure projects, and  
16 another regarding the special legislation regarding pensions for former city politicians. RSD  
17 provides support for its assertion, including a press article that cites to the polling on the pension  
18 issue.<sup>36</sup>

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<sup>33</sup> *Id.* at 2-3, 5.

<sup>34</sup> *Id.* at 3-5.

<sup>35</sup> *Id.* at 2-3.

<sup>36</sup> *Id.* at 3.

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1 RSD explains that campaign consulting fees were for “activities relating to the research  
2 and fundraising activities of the committee,” fees which are “common and made ‘in the normal  
3 course of supporting ballot initiatives.’”<sup>37</sup> Similarly, the fees to Aristotle and the digital media  
4 firm were for email and credit cards fees charged on donations raised by RSD during this  
5 period.<sup>38</sup>

6 With respect to DeMaio’s trip to Washington, D.C., RSD shows that DeMaio attended an  
7 AEI event in Washington, D.C., in January 2013 to give a speech on a ballot initiative on  
8 pension reform that RSD developed and helped to qualify and pass during the 2012 election.<sup>39</sup>  
9 AEI’s website contains a video of DeMaio’s speech at the event, which addresses pension reform  
10 and makes no mention of any federal election campaign.<sup>40</sup>

11 RSD’s disclosure report covering the first half of 2013 also supports its assertions that its  
12 activity during the first half of 2013 did not impermissibly support DeMaio’s “testing the  
13 waters.”<sup>41</sup> As noted, RSD disclosed the receipt of only a single donation after April 2, 2013 —  
14 \$100 from a corporation on May 5, 2013, before RSD assertedly zeroed out its account on  
15 May 24 and before DeMaio’s stated May 27, 2013, decision to run for Congress. RSD disclosed

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<sup>37</sup> RSD Resp. at 3.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *See id.*; <http://www.aei.org/events/2013/01/15/san-diego-public-pension-reforms-a-road-map-for-the-nation/>.

<sup>41</sup> The Complaint alleges that RSD’s disbursements were made for the purpose of DeMaio testing the waters for a potential candidacy, not that they caused DeMaio to surpass the \$5,000 contribution making him a federal candidate prior to his formal declaration. *See* 2 U.S.C. § 431(2). And, as the Commission’s analysis shows, the payments do not appear to have been made in connection with DeMaio testing the waters, or with his ultimate candidacy. Thus, the available information does not suggest that DeMaio became a federal candidate earlier than his stated decision on May 27, 2013.

1 a single subsequent receipt — a \$500 loan from DeMaio on June 1, 2013 — and disclosed that  
2 amount as its cash balance as of June 30, 2013.<sup>42</sup>

3 Therefore, the available information does not indicate that there is reason to believe the  
4 funds RSD spent were to test the waters of a federal candidacy by DeMaio.<sup>43</sup> Accordingly, the  
5 Commission finds no reason to believe that Reform San Diego with Carl DeMaio f.k.a. Reform  
6 San Diego violated 2 U.S.C. § 441i(e), that Carl DeMaio violated 2 U.S.C. § 441i(e), or that Carl  
7 DeMaio for Congress and Paul Kilgore in his official capacity as treasurer violated 2 U.S.C.  
8 §§ 441i(e) or 434(b). *See* Statement of Policy Regarding Commission Action in Matters at the  
9 Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (no reason  
10 to believe finding appropriate when the available information fails to give rise to a reasonable  
11 inference that a violation has occurred). Finally, the Commission closes the file.

<sup>42</sup> *See* RSD 2013 Mid Year Report at 3, 25.

<sup>43</sup> The Commission notes that a review of RSD's disclosure reports shows that since DeMaio became a federal candidate, RSD has held no federally-impermissible funds and has accepted only federally-permissible funds. *See* RSD Report covering July 1 to Oct. 5, 2013, at 3-4, RSD Report covering Oct. 6 to Nov. 2, 2013, at 3, and RSD Report covering Nov. 3 to Dec. 31, 2013, at 3-4, filed with the City of San Diego Office of the City Clerk (portal at <https://ssl.netfile.com/pub2/Default.aspx?aid=CSD>). *See also* RSD Resp. at 4. The "Donations" page of RSD's website states that "Individuals may contribute up to \$2600 per election cycle. Political Action Committees may contribute up to \$5000 per election cycle. No business or corporate funds can be accepted." *See* [https://fs2.formsite.com/carldemaio/form8/secure\\_index.html](https://fs2.formsite.com/carldemaio/form8/secure_index.html). Further, although several individuals who donated to RSD after DeMaio became a federal candidate also contributed to the Committee, the Commission has determined that a ballot measure committee EFMC'd by a federal candidate is not affiliated with the candidate's principal campaign committee and thus they have separate contribution limits. *See* Advisory Op. 2003-12 (Flake) at 7-8; 2 U.S.C. § 441a(a)(5). Indeed, RSD says that it "has reviewed the FEC Advisory Letter to Congressman Flake which outlines the appropriate way a ballot measure committee can operate" and "continues to use that FEC Advisory Letter to guide its activities to ensure absolute compliance with FEC regulations." RSD Resp. at 5. In addition, RSD disclosed very little spending during the second half of 2013 — an unitemized \$144.01 disbursement plus \$750.00 under "Accrued Expenses (Unpaid Bills)" owed to Aristotle. *See* RSD Report covering July 1 to Oct. 5, 2013, at 6 and RSD Report covering Nov. 3 to Dec. 31, 2013, at 6.